

REMARKS

I. Overview

In the Official Action, the Examiner allowed Claims 1, 2, 5, 10, 11, 24, 26, 27, 30, 34-37 and 41. The Examiner cited Claim 39 as being allowable, if it were placed in independent form including all of the limitations of the base claim (Claim 38) from which it depended. Further, the Examiner rejected Claims 6, 21, 25 and 40 under Section 112 for indefiniteness, and rejected Claim 38 under Section 103.

Also, Claims 13-18, 20 and 22, 23 and 28 and 32 and 33 were withdrawn as being directed to a non-elected species.

With this Response, the Applicants have amended Claims, have accepted the allowance of those claims that were allowed; have amended those claims (Claims 6, 21, 25 and 40) that were rejected under Section 112 to remove that language that was perceived as being indefinite; and have cancelled Claim 39, which is the only claim rejected under Section 103. As such, the Applicants submit that these claims are in condition for allowance.

Further, as the withdrawn claims are all dependent claims which now depend from allowable independent claims, the Applicants submit that the withdrawn claims should be reinserted into the application.

II. The Allowed Claims

The Examiner is thanked for the notice that Claims 1, 2, 5, 10, 11, 24, 26, 27, 30, 34-37 and 41 are allowed. The Examiner's allowance of these claims is gratefully accepted.

III. Rejections Under Section 112

In the Official Action, the Examiner rejected Claim 26 based on her belief that there was

no antecedent basis for the limitation “the lower edge”. With this Response, the Applicants have amended Claim 6 so as to include an antecedent basis for “the lower edge”.

With Claim 21, the Examiner believed that the language of “an inspiratory gas port the dome portion” and “inspiratory gas port to place the patient end” was unclear.

In this Response, the Applicants have amended Claim 21 to rearrange the language of Claim 21 so that these unclarities have been clarified.

The Examiner also alleged that the term “the exhaust port” in Claim 21, line 25 had no antecedent basis.

The Applicants respectfully disagrees. In this regard, the Examiner’s attention is directed to line 14 of Claim 21 where there exists a recitation of “an exhaust port” that provides an antecedent basis for the recitation of “the exhaust port” in line 25.

In Claim 25, the Examiner believed that “positioned within the nares of the patient the cushion member” was unclear. The Applicants have addressed this issue by adding “wherein” before “cushion member” to clarify this recitation.

Also, the Examiner believed that “the eye shield” lacked an antecedent basis. In this Response, the Applicants have amended Claim 25 to delete the recitation relating to the eye shield.

The Examiner objected to Claim 40 because she believed that the use of the term “relative” in line 2 was indefinite. With this Response, the Applicants have amended Claim 40 to remove the term “relative to the face and gas port” to remove this perceived indefiniteness.

In view of the foregoing amendments, the Applicants believe that they have successfully addressed all of the Examiner’s issues relating to these claims under Section 112. Withdrawal of

the rejections under Section 112 and allowance of these claims is respectfully requested.

IV. Claim 38

The Examiner has rejected Claim 38 under Section 103. With this Response, the Applicants have cancelled Claim 38, thereby rendering the Examiner's rejection of this claim moot.

V. The Withdrawn Claims

The withdrawn claims (listed above) were withdrawn originally pursuant to a restriction requirement of 15 December 2004. In particular, the claims were restricted because the Examiner believed that certain of the claims related to patentably distinct species and sub-species.

Under 37 C.F.R. Section 1.141, claims rejected under such grounds are entitled to consideration if such claims are written in dependent form (which they are) and otherwise include all of the limitations of an allowed generic claim. These criteria are satisfied by all of the withdrawn claims in the present case. For these reasons, the Examiner is respectfully requested to reconsider and reinsert the withdrawn claims, and to allow said withdrawn claims.

VI. Summary

For the foregoing reasons, the Applicants submit that they have addressed all of the Examiner's issues, and that all of the claims presently in the case are in condition for allowance.

The Applicants also submit that the instant amendment should be accepted and entered by the Examiner, as the present amendment complies with Section 1.16(b)(1) insofar as it cancels claims and it complies with any requirements of form expressly set forth in the most recent Official Action.

Re-examination and reconsideration, culminating in the allowance of all claims, in due course, is respectfully requested.

If the Examiner has any questions relating to this Amendment, or would like to discuss any issues about this case with the Applicants' Attorney, she is respectfully requested to contact the Applicants' Attorney, E. Victor Indiano, at (317) 822-0033, or via e-mail at Vic@IPLawIndiana.com.

IV. Request for Extension of Time

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond any submitted with this Response, be charged to the account of **E. Victor Indiano, Deposit Account Number 50-1590**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Victor Indiano', is written over a horizontal line.

E. Victor Indiano
Reg. No. 30,143

cc: Kevin Burrow
Dennis Irlbeck
John Moenning
Thomas McGrail

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